IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HERBERT McCARTNEY, JR. and MARY ANNE McCARTNEY, h/w	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	NO. 02-0338
FORD MOTOR COMPANY,	:	
Defendant.	:	

MEMORANDUM

BUCKWALTER, J. March 7, 2002

I. INTRODUCTION

Herbert McCartney ("McCartney" or "Plaintiff") and his wife Mary Anne McCartney (together the "Plaintiffs") bring this action alleging a defective product manufactured and designed by Ford Motor Company ("Ford" or "Defendant"). At the time of the incident giving rise to this cause of action, Plaintiff, while acting within the scope of his employment, was on the upper level of a car transporter and was proceeding to open the driver's door to a 2000 Ford Taurus and as he went to grasp the door handle, the handle cracked. As a result, Plaintiff lost his balance and he fell off the car transporter to the ground and sustained severe injuries to his body.

II. PROCEDURAL BACKGROUND

Plaintiffs filed a civil action complaint in the Montgomery County Court of Common Pleas. The complaint names only Ford and alleges three counts: (1) breach of warranty; (2) negligence; and (3) loss of consortium.

Ford answered the complaint and pled as new matter, its defenses pursuant to Pa.R.C.P. 1030, including its defense that Plaintiffs are barred in whole or in part by virtue of liability being upon other individuals or entities over whom Ford had no control or duty to control.

Ford removed the suit to federal court based upon diversity and the amount in controversy. Plaintiffs filed the instant motion seeking permission to implead Bethlehem Ford pursuant to Fed. R. Civ. P. 14(b) after discovering that Ford identified as their witness Lori Ebert, a customer repair manager at Bethlehem Ford. Plaintiffs also assert that Bethlehem Ford is an indispensable party to this action.

According to Plaintiffs' proposed third party complaint, Bethlehem Ford operated a car dealership which was selling the 2000 Ford Taurus that is the subject of Plaintiffs' complaint. At the time of the events described in their complaint, Plaintiffs believe that the Ford Taurus was on a parking lot belonging to Bethlehem Ford and that the car was subsequently repaired under warranty pursuant to the instructions

of Ford. Plaintiffs allege that Bethlehem Ford had a duty to maintain, warn, and/or protect the Plaintiff while he was on its parking lot from any dangerous and/or defective conditions.

Plaintiffs admit that any claims against the Third Party Defendant are beyond the Pennsylvania two-year statute of limitations. Therefore, Plaintiffs cannot bring a separate cause of action against Bethlehem Ford.[1]

Defendant opposes the joinder on three grounds: (1) Ford did not file a counterclaim against Plaintiffs and therefore joinder pursuant to Fed. R. Civ. P. 14(b) is not proper; (2) Bethlehem Ford is not an indispensable party to this action; and (3) joinder of Bethlehem Ford will destroy diversity.

III. DISCUSSION

A. Joinder Pursuant to Fed. R. Civ. P. 14(b)

Fed. R. Civ. P. 14(b) provides that a plaintiff may bring in a third party "[w]hen a counterclaim is asserted against a plaintiff." Fed. R. Civ. P. 14(b). Plaintiffs admit that no counterclaim has been asserted against them by Defendant. Plaintiffs nonetheless argue that the affirmative defenses of the

1. Plaintiffs claim that Ford raised its defense that liability may be attributable to other entities on the eve of the statute of limitations. However, this is not entirely accurate in that the statute expired on or about February 4, 2002. Defendant raised its defenses in its answer to Plaintiff's complaint, filed January 16, 2002. Therefore, although Plaintiffs would have had to act quickly, there was approximately 15 days for Plaintiffs to so act. Instead, Plaintiffs waited nearly thirty days after Ford answered the complaint to seek permission to join Bethlehem Ford.

Defendant infer that a counterclaim exists as Defendant is asserting another entity exists who is responsible for the incident in question.

Joinder of Bethlehem Ford under Fed. R. Civ. P. 14(b) would only be appropriate if Bethlehem Ford were potentially liable to Plaintiffs for all or part of Plaintiffs' liability to Ford. However, Ford has made no claim against Plaintiffs for which either Plaintiffs or Bethlehem Ford could be liable. Therefore, Ford has not asserted a counterclaim against Plaintiffs and joinder under Fed. R. Civ. P. 14(b) is not proper.

B. Joinder as an Indispensable Party

Without further explanation, Plaintiff argues only that "[i]nasmuch as the Defendant Ford Motor Company has pled that they intend to rely upon defenses of liability being upon parties over whom they had no control, nor duty to control and have identified as witnesses individuals associated with such entities, it is clearly apparent that these entities are indispensable parties to this action."

Subsection (a) of Fed. R. Civ. P. 19 addresses the issue of whether a party should be joined as a "necessary" party. Subsection (b) concerns the issue of whether a party is an "indispensable" party. In determining whether joinder is proper pursuant to Rule 19, a court first must determine whether a party is a necessary party to the dispute. If the party is determined

to be a necessary party but cannot be joined because such joinder would defeat diversity, it must then be determined whether the absent party is an indispensable party.

Rule 19(a) states that a party is necessary if either (1) complete relief cannot be accorded among those already parties, or (2) the absent party claims some interest in the action and the person's absence will (i) impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to risk of incurring double, multiple, or otherwise inconsistent obligations. If either subsection is satisfied, the absent party is a necessary party that should be joined if possible. Under Rule 19(a)(1), a court first addresses whether the parties can be afforded complete relief in the absence of the non-joined party.

The "complete relief" clause is susceptible to two interpretations. Because the goal of this provision is to preclude multiple lawsuits on the same cause of action, some courts interpret the clause broadly, commanding joinder whenever nonjoinder will fail to resolve all related claims of all potentially interested persons. See Whyham v. Piper Aircraft Corp., 96 F.R.D. 557, 560 (M.D. Pa. 1982) (absentees held to be necessary parties because they, not present defendant, might have

been responsible for harm to plaintiff).[2] However, the better interpretation and the interpretation truer to the language of the clause, requires joinder when nonjoinder precludes the court from effecting relief not in some overall sense, but between current parties only. See Angst v. Royal Maccabees Life Ins. Co., 77 F.3d 701, 705 (3d Cir. 1996) ("Completeness is determined on the basis of those persons who are already parties, and not as between a party and the absent person whose joinder is sought."). The McCartneys and Ford will effectively resolve their entire controversy despite Bethlehem Ford's absence. Bethlehem Ford's interest would only come into play if Plaintiffs cannot establish liability against Ford because they did not own, repair or control the 2000 Ford Taurus or the lot on which the accident occurred. The possibility that Plaintiff has missed the opportunity to bring a separate cause of action against Bethlehem Ford because the statute has run does not make Bethlehem Ford a necessary party. In other words, Plaintiffs and Ford will not be denied complete relief in Bethlehem Ford's absence.

Furthermore, the record is devoid of evidence that Bethlehem Ford's absence would impede or impair its interests; and the record is devoid of evidence that Ford would be subject to substantial risk of incurring double, multiple, or otherwise

2. The Whyham court recognized that Rule 19(a) sets forth three criteria that warrant a finding by the court that a person is a necessary party and although a defendant need only establish one of these criteria, the Wyham court believed that all three criteria had been satisfied.

inconsistent obligations by reason of the claimed interest. Accordingly, Bethlehem Ford is not a necessary party under Rule 19(a) and consequently, it cannot be an indispensable party under Rule 19(b). Therefore, joinder under Fed. R. Civ. P. 19 is not proper.

C. Diversity

As already outlined, the basis for a finding that joinder of Bethlehem Ford as a third party defendant is not proper, Defendant's argument that joinder of Bethlehem Ford would destroy diversity need not be addressed. It should be noted that the parties' argument on this issue is incomplete and a determination as to Bethlehem Ford's citizenship cannot be determined.

Plaintiffs assert that Bethlehem Ford is a Delaware corporation and because Plaintiffs are Pennsylvania citizens, diversity is not destroyed. Defendant asserts that Bethlehem Ford maintains its principal place of business in Pennsylvania and therefore, argues that diversity would be destroyed if Plaintiffs were permitted to join Bethlehem Ford as a third party defendant.

The diversity statute provides:

> (c) For purposes of this section ... (1) a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.

28 U.S.C. § 1332(c)(1).

Two tests have developed for determining a corporation's principal place of business. In this Circuit, courts primarily apply the "center of corporate activities test." Kelly v. United States Steel Corp., 284 F.2d 850 (3d Cir. 1960). Under this test, a corporation's principal place of business is the state where its production or service operations are centered. Other courts apply the "nerve center" test, which focuses on the location of the corporate decision makers. See, e.g., In re Balfour MacLaine Int'l Ltd., 85 F.3d 68 (2d Cir. 1996). Still other courts combine the tests and consider a corporation's "total activities." 13B, Wright, Miller & Cooper, Federal Practice and Procedure, § 3625. As stated, neither party has presented relevant facts which would allow a proper analysis under these tests.

IV. CONCLUSION

Joinder under Fed. R. Civ. P. 14(b) is improper because Defendant has not asserted a counterclaim against Plaintiffs. Furthermore, joinder under Fed. R. Civ. P. 19 is improper because none of the three criteria set forth in Rule 19(a) has been met, warranting a finding that Bethlehem Ford is a necessary party.

An order follows.

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ORDER

AND NOW, this 7th day of March, 2002, upon consideration of Plaintiffs' Motion to Bring in a Third Party Defendant (Docket No. 3) and Defendant's Motion in Opposition thereto, (Docket No. 4), it is hereby **ORDERED** that Plaintiffs' motion is **DENIED.**

Plaintiffs have not met the necessary criteria which would entitle them to join Bethlehem Suburban Motor Sales, Inc. as a third party defendant under either Federal Rule of Civil Procedure 14 or 19.

BY THE COURT:

RONALD L. BUCKWALTER, J.